

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	CC Docket No. 01-92
Developing a Unified Intercarrier)	
Compensation Regime)	

REPLY COMMENTS OF CENTURYTEL, INC.

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Summary

The record in this proceeding confirms the formidable complexity posed by comprehensive inter-carrier compensation reform. Numerous parties raise grave concerns about bill-and-keep proposals and the likely adverse impact on consumers. It is estimated that bill-and-keep proposals – and similar proposals that seek to relieve carriers of their obligation to provide compensation for use of other carriers’ telecommunications infrastructure – would shift a total of roughly \$9 billion per year to new charges to be borne by consumers, including between \$0.9 billion and \$2.3 billion annually to new universal service mechanisms. Without any increased support, there is evidence on the record showing that a bill-and-keep approach would result in an average monthly *increase* of about \$22 per line on rural consumer bills. Such an increase would be devastating to rural communities.

Several commenters thus predict the proposed reforms could result in rural carrier revenue shortfalls, rather than rate increases, or both. Rural ILECs are the carriers-of-last-resort, the *only* carriers with a ubiquitous network and an obligation to serve the entire study area. These carrier-of-last-resort obligations result in higher costs. Competitive carriers are most likely to target only the most profitable customers, leaving the ILEC the continued obligation to serve the highest cost customers that are most likely to drop service altogether in the face of a rate increase. The expected consequence would be decreased investment in rural markets. The country cannot afford this, especially when it is widely recognized, and indeed President Bush and Chairman Martin have declared it a top priority, that greater investment in broadband facilities is needed throughout the Nation. For these reasons, any rate-structure must include three balanced revenue streams, including end-user charges, universal service support, *and* inter-carrier compensation.

Because of the potential adverse consequences of many of the comprehensive inter-carrier compensation reform proposals before the Commission, many commenters support incremental change. CenturyTel believes the record supports changes to the interconnection rules to eliminate much of the arbitrage of ILEC networks that goes on today. For example, the record supports immediate action to put a halt to “phantom traffic.” The Commission cannot assess the impact of inter-carrier compensation reform until all inter-carrier revenues can be identified and properly billed. Clarifying that all carriers must identify traffic they originate could dramatically improve the stability of current revenues and bring much-needed clarity to inter-carrier arrangements.

More comprehensive reform should then address points of interconnection and the rate structure for inter-carrier compensation in a comprehensive manner, to eliminate non-cost-based disparities between different types of traffic. Many commenters support the need for clarification of the interconnection obligations of ILECs and interconnecting carriers. Specifically, the Commission should address the issues of virtual NXX, the CMRS intraMTA rules, and internet protocol (“IP”) traffic, which are used more and more to place burdens on ILEC networks without compensation.

CenturyTel respectfully disagrees with those ILECs that believe the default interconnection rules espoused by the Intercarrier Compensation Forum (“ICF”) will harm rural areas. CenturyTel believes the ICF Plan’s rural interconnection rules will substantially mitigate the cost of exchanging traffic with non-rural carriers, by requiring the non-rural carrier to bring traffic to the rural carrier’s terminating end-office, and establish at least one point of interconnection with the rural carrier in every non-contiguous portion of the rural carrier’s study area. Though it falls short in other respects, including lack of a voice over IP solution, the

interconnection architecture aspects of the ICF Plan present the most comprehensive solution to pending interconnection problems, and should be given serious consideration as a national network architecture takes shape.

The comments also make clear that, while there are problems with the current system, inter-carrier compensation must continue to be a vital support mechanism in rural study areas. Most rural carriers must rely on access charges to keep rural customer rates affordable and to maintain, operate and invest in rural telecommunications infrastructure. It is CenturyTel's view that the massive shift of access compensation from carriers to end-users would overwhelm the average rate payer. Consequently, some form of access charge mechanism will be needed to protect consumers and minimize the impact on universal service. Numerous states weighed in to express concerns about radical changes to this system. Most commenters agree that inter-carrier compensation reform must be revenue neutral so high-quality, affordable service continues to be available in rural and other high-cost areas.

Revenue neutrality alone is not enough. The Commission should ensure that reform does not disproportionately harm rural consumers in the form of rate increases, as proposed in a number of plans. The rate structure, therefore, must compensate carriers for use of their networks by others rather than shifting the entire burden of network cost recovery to end-users regardless of how they use the network. Therefore, CenturyTel urges the Commission to limit any increase in the residential subscriber line charge ("SLC") to no more than \$1.50 beyond the current \$6.50 cap. Any increase in the SLC would be a regressive charge, resulting in only a small percentage increase on the bills of high-use consumers, and placing the greatest percentage burden on those end-users that use the network least and who are least able to afford such increases.

In contrast, the rate structure favored by many rural carriers continues appropriate usage-sensitive charges. Such charges would both mitigate harm to consumers and deter arbitrage of the network by requiring users to pay as they go. In its efforts to unify inter-carrier compensation rates, the Commission must evaluate the impact on rural carriers and their customers. Inter-carrier compensation rates must be set at levels reasonably designed to compensate rural carriers for their investment in, maintenance of and continued upgrading of rural networks. Further, it is time to give rate-of-return carriers a degree of pricing flexibility heretofore enjoyed mainly by the largest carriers.

Comprehensive reform also should make universal service policies more competitively neutral. The contribution mechanism should be addressed before the Commission makes other changes that will put stress on the fund. Further, any new support should not be provided to competitive eligible telecommunications carriers (“CETCs”), unless they are subject to the same regulatory obligations, provide the same level of service, and experience the same revenue shift, as the carrier-of-last-resort.

CenturyTel also supports those plans, including the ICF Plan, Rural Alliance Plan, and the Frontier Plan, that advocate lifting the cap on ILEC high-cost loop support (“HCLS”) and modifying the Rural Growth Factor. The Commission’s initial step as it moves toward lifting the cap on HCLS should be to remedy the Rural Growth Factor, which has caused ILEC HCLS to *shrink* due in large part to ILEC line loss over the last several years. The result of the cap and current Rural Growth Factor mechanism is that, each year, more and more rural carriers and the rural customers they serve lose support due to insufficient funding to support all high-cost exchanges. Although the Commission’s rules provide that all carriers whose costs exceed the national average cost per loop (“NACPL”) by 115% are eligible for high-cost loop support

("HCLS"), today, carriers do not actually receive HCLS unless their average cost per loop exceeds by 146% the NACPL target of \$240 established by the Rural Task Force. Solely because of the rising NACPL, more than 140 study areas serving 4.4 million access lines have become ineligible for support. Today, insufficient funds are available to support affordable rates in areas that are deemed high-cost under the Commission rules.

Therefore, the foregoing changes are necessary to ensure that universal service support remains specific, sufficient and predictable in accordance with Section 254 of the Act.

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REPLY COMMENTS OF CENTURYTEL, INC.

On behalf of its operating subsidiaries, CenturyTel, Inc. (“CenturyTel”) hereby offers its Reply Comments in response to the comments filed in the above-captioned proceeding.¹

I. INTRODUCTION

The foundation of Commission policy is the goal of ensuring that all Americans have adequate communications services at reasonable rates.² While promoting competition and new technologies can help achieve that goal, such priorities cannot take precedence over the “prime directive” of ensuring all communities – including rural ones – have access to advanced services at affordable rates.³ The record in this proceeding confirms that, despite considerable disagreement regarding a number of aspects of the many proposals now before the Commission, universal service is the key consideration in this proceeding. The record contains many reasoned comments from a wide variety of sources explaining the pitfalls of a bill-and-keep approach, and

¹ *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 05-33 (rel. Mar. 3, 2005) (“FNPRM”).

² 47 U.S.C. § 151.

³ *Id.* § 254(b)(3).

the likely adverse impacts on consumers and universal service.⁴ As XO Communications states in its comments, “We did not reach this point overnight. It is unrealistic to expect that the Commission will be able to address all of the distortions in today’s intercarrier compensation mechanisms immediately.”⁵ The Commission should proceed incrementally to rationalize inter-carrier rules in a logical progression of steps: first stabilizing revenues and then shifting them over a reasonable transition.

In response to the initial comments submitted in this proceeding, CenturyTel reaffirms its call for immediate action on certain discrete issues that will go a long way to mending the current system of inter-carrier compensation and universal service. Section II of these Reply Comments discusses three initiatives that the Commission should implement even while it continues to study more comprehensive reform, including: (1) enforcing truth-in-labeling requirements to remedy “phantom traffic;” (2) revising the universal service contribution methodology to make it more stable and competitively neutral; and (3) adopting rule changes proposed by CenturyTel to afford rate-of-return carriers pricing flexibility for interstate access services. These changes, proposed in CenturyTel’s prior filings in this docket and in previous Commission proceedings, are supported by other commenters as appropriate first steps in this proceeding. After completing these relatively simple measures, the Commission will be in a much better position to assess how to go about instituting some of the more difficult measures under consideration.

⁴ Comments of CenturyTel at 16-32; Comments of BellSouth at 9-12; Comments of Frontier at 2, 4, 6; Comments of NASUCA at 39; Comments of NDATC at 6-7; Comments of The Rural Alliance at 16-18, 25-27; and, Comments of TDS Telecommunications Corp. (“TDS”) at 17-18.

⁵ Comments of XO at 3.

In Section III, below, CenturyTel discusses several prominent features of inter-carrier compensation reform on which there is growing support in the record: (1) inter-carrier compensation reform must preserve balanced revenue streams so networks continue to recoup their value; (2) the price of reform must not be disproportionately borne by rural consumers in the form of end-user rate increases or decreased service; (3) inter-carrier compensation should be unified and simplified, but in a revenue neutral manner; (4) ILEC high-cost loop support should be uncapped and the Rural Growth Factor revised so as to restore funding to ILECs based on their actual costs; (5) any new support mechanism designed to replace forgone access charges should not be made available to wireless competitive eligible telecommunications carriers (“CETCs”), or any other carriers that do not currently receive revenues from access charges; and (6) reform must clarify the interconnection obligations of ILECs and interconnecting carriers.

By heeding these principles, the Commission can achieve sensible reform and uphold its universal service mandate, ensuring that inter-carrier compensation reform benefits consumers in all regions of the Nation.

II. THE COMMISSION IMMEDIATELY CAN BRING NEEDED STABILITY AND CLARITY TO THE FEDERAL REGULATORY REGIME, EVEN WHILE IT CONSIDERS FURTHER REFORMS

A. The Commission Should Implement Truth-In-Labeling Requirements

There is wide agreement that mislabeled or unlabeled traffic that cannot properly be billed (known as “phantom traffic”) is a problem that must be solved for any inter-carrier compensation regime to work.⁶ The Commission can remedy the problem of phantom traffic by

⁶ Comments of CenturyTel at 5, 7; Comments of Alexicon Telecommunications Consulting at 6-7; Comments of GVNW Consulting Inc. at 27; Comments of Interstate Telcom Consulting, Inc. (“ITCI”) at 15, 18; Comments of Mid America Computer Corporation (“MACC”) at 2; Comments of North Dakota Public Service Commission (“NDPSC”) at 3; Comments of National Telecommunications Cooperative Association (“NTCA”) at 51-54; Comments of TDS at 10-12.

clarifying that failing to properly label traffic violates Sections 201(b), 202(a), 251(a), 252 and 332(c)(1) of the Act.⁷ Pursuant to these sections of the Act, telecommunications common carriers, regardless of technology, have the affirmative duty to engage in reasonable and non-discriminatory practices to interconnect with other carriers upon reasonable request, and to pay reasonable compensation for interconnection and termination of traffic on another carrier's network.⁸ The obligation to pay for interconnection also is required under the Commission's rules governing reciprocal compensation (for local traffic) and access charges (for interexchange traffic).⁹ Therefore, when a carrier engages in access charge or reciprocal compensation avoidance through deceptive labeling, this is a violation of the affirmative duties set forth in the Act, as well as the Commission's rules.¹⁰

Commission precedent demonstrates that interconnecting carriers have an obligation under the Act to accept and pay for inter-carrier services from which they benefit.¹¹

⁷ 47 U.S.C. §§ 201(b) ("any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful"), 202(a) ("It shall be unlawful for any common carrier...to subject any particular person, class of persons, or locality to the undue or unreasonable prejudice or disadvantage"), 251(a) (setting forth a duty for carriers to interconnect), 251(b)(5) (setting forth a duty to establish reciprocal compensation arrangements), 252(d)(2) (describing the pricing standards for reciprocal compensation), 332(c)(1) (treating providers of commercial mobile services as common carriers for purposes of §§ 201-276).

⁸ See *id.* §§ 201(b), 202(a), 251(a).

⁹ See, e.g., 47 C.F.R. §§ 20.11(b)(2) (requiring CMRS carriers and LECs to pay reasonable compensation to each other for terminating traffic on each others' networks); 20.15 (specifically applying numerous section of Title II of the Act to CMRS carriers, including Sections 201, 202, and 206 through 208 of the Act); 69.5 (discussing the imposition of access charges on all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services).

¹⁰ See Comments of GVNW Consulting at 27 ("attempts by carriers to strip off or alter billing information is by definition illegal").

¹¹ *AT&T and Sprint Petitions for Declaratory Ruling on CLEC Access Charge Issues*, Declaratory Ruling, 16 FCC Rcd 19158 (2001), *vacated on other grounds sub nom.*, *AT&T Corp. v. FCC*, 292 F.3d 808 (D.C. Cir. 2002).

Even though phantom traffic schemes are unlawful, no Commission penalties have been imposed for evading access charges. CenturyTel urges the Commission to assert its authority under Section 208 of the Act¹² to enforce access charge rules and require payment by carriers that fail to comply with their payment obligations under the rules.¹³

The Commission should, at the very least, clarify that disguising traffic is a violation of the Act and Commission rules. Such clarification would facilitate resolution of non-payment claims brought to the Commission or federal court. Even more important, clarification could discourage phantom traffic practices by expediting collection actions. Until the offending carriers are forced by the Commission or the courts to pay damages, this problem will continue to grow. As NECA explains, because of the lack of penalties for disguising traffic, discovery of the carrier sending phantom traffic typically is not enough to put an end to the practice.¹⁴ Rather, “the result appears to be the offending service provider learns to improve their ‘phantom’ techniques.”¹⁵ According to NECA, “a sizable portion of traffic now terminating on ILEC switches is being delivered in a form in which the billing information is absent, lost, stripped or altered.”¹⁶ The result is that upwards of 20% of traffic is lost.¹⁷ The current lack of Commission involvement has disserved the public interest.

¹² Section 208 provides that “any person complaining of anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof, may apply to said Commission by petition” The statute further provides that, “it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.” 47 U.S.C. § 208(a).

¹³ As CenturyTel explained in its comments, however, the Commission has directed carriers to take disputes over non-payment by other carriers of federally authorized charges to federal district courts. Comments of CenturyTel at note 7 (citing cases).

¹⁴ Comments of NECA at 16.

¹⁵ *Id.*

¹⁶ *Id.*

Several commenters also advocate that the Commission also should discourage phantom traffic by clarifying the obligations of all intermediate carriers to ensure that the traffic they receive and hand off is properly labeled, so that the terminating carrier can bill the correct carrier for the traffic.¹⁸ CenturyTel supports proposals that would allow carriers, if they cannot bill the originating carrier, to bill the intermediate carrier handing off unlabeled or mislabeled traffic.¹⁹

Further, the Commission should reaffirm that transiting or terminating carriers may refuse traffic from carriers with a history of non-payment.²⁰ Under current rules, interstate tariffs may require payment of past due amounts as a condition of future provision of access services.²¹ In other words, if an IXC does not pay its access charge bill, an ILEC may cut off the

¹⁷ *Id.* (citing Josh Long, *Rural Telcos Grapple to Identify Phantom Traffic*, Xchange Magazine (Apr. 1, 2004), available at <http://www.xchangemag.com/articles441coverstory3.html>).

¹⁸ Alliance for Rational Intercarrier Compensation (ARIC) – Fair Affordable Comprehensive Telecommunications Solution (FACTS) at 54-55 (“ARIC Plan”), attached to Letter from Wendy Thompson Fast, President, Consolidated Companies and Ken Pfister, Great Plains Communications to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-92, 96-45, 04-36, 99-68, and 96-98 (filed October 25, 2004); Comments of ITCI at 15, 18; Comments of TDS at 10-12. The ICF embraces the principle that every intermediate carrier should be responsible for obtaining and forwarding the necessary information from the carrier from which it takes traffic. Regulatory Reform Proposal of the Intercarrier Compensation Forum, Appendix A, A-1–A-2, October 5, 2005 (“ICF Plan”), attached to Letter from Gary M. Epstein and Richard R. Cameron, Counsel for the ICF, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Tab A (filed, Oct. 5, 2004).

¹⁹ See ARIC Plan at 55 (proposes to hold tandem owners responsible for inter-carrier compensation payments to the terminating ILEC for “unidentified or wrongly identified traffic forwarded by these tandem operators”); Comments of NTCA at 53 (suggesting that “all unlabeled traffic to be billed to the carrier at the other end of the trunk group on which the traffic arrives as access traffic”).

²⁰ Comments of CenturyTel at 7-8 (citing ARIC Plan at 55; Robert B. Nelson, Commissioner, Michigan Public Service Commission, et al. to Marlene H. Dortch, Secretary, Federal Communications Commission, Appendix C (May 18, 2005) (“May 18 NARUC Proposal”)).

²¹ *Local Exchange Carriers’ Rates, Terms, And Conditions For Expanded Interconnection Through Physical Collocation For Special Access And Switched Transport*, 12 FCC Rcd

IXC in accordance with the terms of the tariff. Similarly, as to non-access traffic, carriers ought to be permitted to include in their interconnection agreements terms requiring payment within a reasonable period, and establishing consequences for non-payment, which may include refusal to terminate future traffic.

B. The Commission Should Revise the Universal Service Contribution Methodology to Make It More Stable and Competitively Neutral

Many comments noted the lack of stability in the current contribution base for federal universal service support mechanisms.²² Several commenters have urged the Commission to reform the universal service support contribution mechanism so that it is technologically and competitively neutral.²³ Indeed, the current contribution mechanism unfairly burdens customers of traditional wireline services, as all other technologies have either been given a free pass or only contribute a fraction of their fair share.²⁴ The Commission can make

18730, ¶ 365 (1997) (“We conclude that an interconnector’s failure to comply with certain tariff provisions could have potentially serious consequences for the LEC, and that tariff provisions permitting termination may offer the LEC a reasonable mechanism for assuring compliance with tariff provisions that are essential for protecting the integrity of the LEC’s network and financial investment”).

²² See, e.g., Comments of SBC at 24-25 (stating that “[the contribution] methodology is competitively skewed, unlawful, and increasingly unsustainable”); see also Comments of ICF at 31 (advocating their plan based on its ability to increase the stability of the universal service fund); Comments of Dobson Cellular and America Cellular at 9-10 (stating that true reform of universal service requires the largest possible contribution base); Comments of Rural Iowa Independent Telephone Association at 20 (“If the existing mechanism is retained, all voice carriers should be required to contribute”); Comments of Iowa Utilities Board at 3 (“The basis for universal service contributions should be expanded”).

²³ Comments of SBC at 30; ICF Plan at 80; Comments of Office of Advocacy, U.S. Small Business Administration at 13; Comments of Dobson Cellular and America Cellular at 10; Comments of Iowa Utilities Board at 3; Comments of MPower at 14-15.

²⁴ *Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket Nos. 96-45, FCC 02-329 (rel. Dec. 13, 2002); see also *Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 13 FCC Rcd 21252, 21258-60 (1998); *IP-Enabled Services*, Notice of Proposed Rulemaking, FCC 04-28, ¶¶ 63-66 (rel. Mar. 10, 2004) (discussing whether VOIP and other IP-enabled services should be

great strides toward shoring up federal support mechanisms – and therefore network investment in high-cost areas – by expanding the current contribution base so that all users of the public switched telephone network (“PSTN”) contribute to universal service on an equitable basis.²⁵

It is the Commission’s own policy that universal service should be administered in a competitively neutral, technology neutral manner.²⁶ Yet, the Commission’s distinctions between commercial mobile radio service (“CMRS”) and wireline service, and between digital subscriber line (“DSL”) and cable modem, are purely technology-driven. The need for competitive neutrality has become increasingly important as people migrate more of their traffic to alternative technologies such as wireless and voice over IP (“VOIP”) that do not contribute equitably to universal service.²⁷ As customers migrate to alternative service providers that have lesser contribution obligations, the contribution base has been shrinking. The majority of consumers are left holding the bag, with a universal service contribution factor that now exceeds 10 percent of a customer’s total bill for traditional wireline services.²⁸

subject to universal service contribution requirements); *Petition for Declaratory Ruling that pulver.com's Free World Dialup Is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, 19 FCC Rcd 3307, (2004) (determining that Pulver.com’s Free World Dialup service is an information service and therefore it is exempt from universal service contribution).

²⁵ See Comments of Eastern Rural Telecom Association at 5.

²⁶ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, at ¶ 47 (rel. May 8, 1997) (“COMPETITIVE NEUTRALITY -- Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”).

²⁷ Frank G. Louthan IV & Ben Gordan, *Reassessing the Impact of Access Lines on Wireline Carriers*, Raymond, James & Associates, Inc., July 11, 2005, at 2-5 (“Raymond James Report”); see *supra* note 24.

²⁸ *Proposed Third Quarter 2005 Universal Service Contribution Factor*, DA 05-1664, at 1 (rel. June 14, 2005) (setting the third quarter contribution factor at 10.2%). The rise in contribution factor inevitably starts a vicious cycle whereby customer migration away from

McLean & Brown's universal service study supports elimination of the wireless safe harbor.²⁹ CMRS carriers should contribute on 100 percent of their jurisdictionally interstate revenues. Wireless CETCs are, by far, the fastest growing drain on the universal service fund. For instance, while high-cost funding of wireless CETCs in 2003 was approximately \$127 million, it grew to over \$323 million by 2004 – an increase of over 250% in just one year.³⁰ This trend continues in 2005, with total CETC high-cost support projected at over \$800 million and wireless CETCs accounting for over 90% of this amount.³¹ Approximately \$150 million more in CETC support is pending Commission approval.³² CMRS carriers should pay based on actual jurisdictional revenues, and not be afforded a safe harbor.

CenturyTel also supports proposals on the record that VOIP and cable telephony contribute to universal service to the same extent as traditional telephony providers.³³ To the extent that DSL contributes, cable broadband also should contribute to universal service. As to those that argue that cable may not contribute unless it also receives support, CenturyTel points

traditional wireline services causes the contribution factor to rise for those customers that remain. The rising contribution factor assessed to traditional wireline services, in turn, causes further customer migration because the high contribution factor makes technologies that do not pay their fair share (and may provide inferior service) relatively attractive.

²⁹ McLean & Brown, *Universal: Service, Rural Infrastructure at Risk*, CC Docket No. 96-45, 15, 26-27 (filed Apr. 19, 2005) ("McLean Study") (discussing the significant amount of universal service support received by wireless carriers and the ubiquity of wireless service).

³⁰ Distribution of HC Support Between Wireless and Wireline CETCs, 1999 Through 4Q2004, available at http://www.universalservice.org/hc/overview/qtr_graphs.asp.

³¹ *Id.* (showing that wireless CETCs historically receive well over 90% of total CETC high-cost support); USAC Quarterly Administrative Filing 2005, Third Quarter, Appendix HC01 at www.universalservice.org/overview/filings (based on third quarter figures, CETCs will receive \$825.7 million in high-cost support on an annualized basis).

³² McLean Study at 26.

³³ See Comments of SBC at 26 (discussing the exemption of "cable modem service" and stating, "This regulatory disparity is senseless."); Comments of RICA at 13 (VOIP) ("RICA does not support exempting VOIP calls which originate or terminate on the Public Switched Network from the obligations to compensate the owners of the local network, or to contribute to universal service support").

out that eligibility to receive support never has been a criterion for the obligation to pay into the fund.³⁴ As the Commission has found, universal service contributions “help preserve the universal availability of service over the public switched telephone network”³⁵ thus facilitating nationwide provision of all services by all providers. Without the PSTN, the usefulness of IP-enabled services would be severely diminished.³⁶ To the extent carriers using any technology platform terminate calls to the PSTN, they benefit from the universal service policies that have made the PSTN as robust and far-reaching as it is today.³⁷

It is critical that the Commission increase the contribution base to stabilize universal service and to end discrimination in favor of competing technologies and against the carrier-of-last-resort. This area is ripe for decision and should be addressed immediately.

C. The Commission Should Grant CenturyTel’s Proposed Rule Changes To Increase Pricing Flexibility And Revenue Stability For Rate-Of-Return Carriers

In its Comments, CenturyTel reiterated its call for pricing flexibility and incentive regulation for smaller carriers, not just for the price cap ILECs.³⁸ For more than three years, CenturyTel has advocated an incentive regulation plan that would permit rate-of-return carriers

³⁴ For example, interexchange carriers, payphone service providers, paging carriers, and private telecommunications providers all pay universal service support but are not eligible to receive such support. *See Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd 5318, ¶ 263 (1997) (“Fourth Order on Reconsideration”).

³⁵ *Id.* at ¶ 262.

³⁶ *High-Speed Services for Internet Access: Status as of December 31, 2004*, available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/hspd0705.pdf, Charts 2, 4 (rel. July 7, 2005) (showing that ADSL services, upon which IP-enabled services rely and which are a part of the PSTN, make up 36.5% of all high-speed lines and 19.7% of all advanced service lines).

³⁷ *See, e.g.*, Fourth Order on Reconsideration at ¶ 262 (discussing this fact as it relates to paging carriers).

³⁸ Comments of CenturyTel at 36-37.

to elect a modified form of price-cap regulation on a study area basis.³⁹ The Commission sought comment on the CenturyTel Incentive Plan in February 2004,⁴⁰ and a number of parties filed detailed comments in support.⁴¹ CenturyTel urges the Commission to approve the plan without any further delay.

The Commission consistently has promoted incentive regulation as part of its access charge regime, but has not yet allowed rate-of-return carriers to reap the benefits of this policy. The Commission made a significant start toward granting the flexibility CenturyTel requests when it granted the all-or-nothing relief for acquisitions of new exchanges in 2004.⁴² In the order, the Commission modified its all-or-nothing rules to permit rate-of-return carriers to bring recently acquired price cap lines back to rate-of-return regulation without a waiver of the

³⁹ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, at ¶¶ 80-82 (rel. Feb. 26, 2004) (“*MAG Further Notice*”) (seeking comment on CenturyTel Incentive Plan). The FCC Should Permit Rate-of-Return Carriers to Elect Price Cap Regulation for Interstate Access Charges on a Study Area Basis and Eliminate the “All or Nothing Rules,” attached to Letter from Karen Brinkmann, Counsel to CenturyTel, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-45, 98-77, 98-156, 00-256 (filed Dec. 23, 2002); *see* The All-Or-Nothing Rules Should Be Eliminated, Letter from Karen Brinkmann, Counsel to CenturyTel, Inc. to William Caton, Acting Secretary, Federal Communications Commission, CC Docket Nos. 96-45, 98-77, 00-256 (filed Dec. 23, 2002); The CenturyTel Growth and Rural Infrastructure Plan, attached to Letter from Richard R. Cameron, Counsel to CenturyTel, Inc. to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket Nos. 00-256, 96-45, 98-77, 98-166 (filed Sep. 21, 2001).

⁴⁰ *MAG Further Notice*, at ¶¶ 80-82 (rel. Feb. 26, 2004).

⁴¹ Comments of Independent Telephone & Telecommunications Alliance, CC Docket Nos. 00-256, 96-45, at 2 (filed Apr. 23, 2004); Comments of ALLTEL Communications, Inc., Madison River Communications, LLC, and TDS Telecom, Inc., CC Docket Nos. 00-256, 96-45, at n. 2 (filed Apr. 23, 2004); Comments of AT&T, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, at 2-3 (filed Apr. 23, 2004) (supporting the CenturyTel plan with certain modifications); Reply Comments of Western Wireless, CC Docket Nos. 00-256, 96-45, at 4 (filed May 10, 2004) (advocating that the Commission adopt a modified version of the CenturyTel plan).

⁴² *MAG Further Notice* ¶¶ 6-53.

rules.⁴³ The Commission also granted limited pricing flexibility to rate-of-return carriers to allow such carriers to set geographically deaveraged rates for transport and special access services.⁴⁴ As explained in the order:

Granting rate-of-return carriers more flexibility to deaverage these rates enhances the efficiency of the market for those services by allowing prices to be tailored more easily and accurately to reflect costs and, therefore, facilitates competition in both higher and lower cost areas.⁴⁵

Adoption of the CenturyTel Incentive Plan would serve the public interest, and would serve as a significant step toward lowering interstate access charges, by creating incentives rather than a mandate to do so.

III. INTER-CARRIER COMPENSATION REFORM MUST ADEQUATELY PROTECT RURAL CONSUMERS

A. Inter-Carrier Compensation Is a Crucial Support Mechanism in Rural Study Areas

Many of the commenters in this proceeding recklessly advocate dramatic reductions in inter-carrier compensation without replacing the lost compensation for use of carriers' networks.⁴⁶ As CenturyTel explained in its Comments, such rash measures would not achieve the Commission's goals, but would pose a threat to continued service to consumers in high-cost areas.⁴⁷ The Commission identified several goals in reforming inter-carrier compensation, including the need to "encourage the efficient use of, and investment in, telecommunications networks," "the development of efficient competition," and "preservation of

⁴³ *Id.* ¶¶ 10-15.

⁴⁴ *Id.* ¶ 25.

⁴⁵ *Id.*

⁴⁶ *See, e.g.,* Comments of NASUCA at 28-33.

⁴⁷ Comments of CenturyTel at 10-11, 26-27.

universal service.”⁴⁸ Nowhere does the *FNPRM* advocate eliminating investment incentives in rural communities. Verizon explains in its comments that, “Intercarrier compensation reform provides the opportunity for the Commission to promote competition and eliminate regulatory arbitrage; the purpose of such reform is not to reduce carrier revenues or end-user rates.”⁴⁹

As the carrier-of-last-resort serving high-cost areas, rural carriers rely on access charges as a vital support mechanism to ensure that consumer rates in rural markets are affordable, and services in rural markets are comparable to services in urban markets.⁵⁰ Current compensation mechanisms, including universal service and access charges, have served rural communities well by giving carriers-of-last-resort the ability to invest. In its consideration of proposals to reform these mechanisms, the Commission should ensure that such reforms will not cause disruption or deterioration in service to rural end-users.

Certain commenters erroneously characterize revenue neutrality as a request for “guaranteed” earnings. This characterization is wrong for several reasons. There is no “guaranteed” rate of return for any carrier. Rate-of-return regulation requires only that the regulated carrier be given a reasonable *opportunity* to earn a prescribed rate of return.⁵¹ If a carrier over-earns in any prescribed period (two years, at the federal level), it is subject to refund liability and future rate reductions.⁵² If it under-earns, it has no way to make up the lost

⁴⁸ See *FNPRM* at ¶¶ 31-32.

⁴⁹ Comments of Verizon at 4.

⁵⁰ See *FNPRM* at ¶ 32 (noting that “many rural LECs collect a significant percentage of their revenue from interstate and intrastate access charges”).

⁵¹ *Virgin Islands Telephone Corp. v. FCC*, 989 F.2d 1231, 1234 (D.C. Cir. 1993) (“*Vitelco*”) (“the Commission’s refund mechanism must provide carriers with a fair opportunity to achieve their regulated rates of return over the long-term” (citing *AT&T v. FCC*, 836 F.2d 1386, 1392 (D.C. Cir. 1988) (“*AT&T*”))).

⁵² 47 C.F.R. § 65.701 (setting the review period at two years); *Vitelco*, 989 F.2d at 1236. Section 224(a)(3) of the Act provides for a streamlined filing procedure pursuant to which

revenues.⁵³ There is no minimum guaranteed earnings level for rate-of-return carriers. Indeed, in an increasingly competitive world, earnings are even more at risk as ILECs lose lines and minutes,⁵⁴ but still must maintain and invest in their networks to fulfill their carrier-of-last-resort responsibilities. They may seek permission to raise rates, but competitive forces discourage them from actually increasing their charges.

Some commenters imply that the only responsibility that the Commission has is to avoid violating the Takings Clause in the United States Constitution.⁵⁵ This ignores the public interest mandates in the Act. A policy can fail to achieve the Act's mandates even if it is not unconstitutional. The Commission has broad statutory responsibility to preserve and promote universal service.⁵⁶ Those commenters that argue against revenue neutrality fail to recognize the importance of all current revenue streams to a rural carrier's ability to operate, maintain and invest in telecommunications infrastructure.⁵⁷ For rural carriers especially, charges paid by other carriers serve as a support mechanism that is an integral part of providing rural consumers high-

tariffs may be "deemed lawful" and therefore not subject to retrospective refund liability. However, many rate-of-return carriers' rates are *not* deemed lawful, and remain subject to refund liability. *See, e.g., July 1, 2004 Annual Access Charge Tariff Filings*, 19 FCC Rcd 12211, at ¶ 2 (rel. July 1, 2004) (suspending the 2004 NECA tariff, among others).

⁵³ *Vitelco*, 989 F.2d at 1234 (noting that the FCC's prior automatic refund rule was rejected because it "created a one-way ratcheting effect, forcing carriers to refund earnings accumulated in excess of their authorized return, but prohibiting carriers from recouping earnings shortfalls" (citing *AT&T*, 836 F.2d at 1390-91)); *id.* at 1239 (citing *AT&T*, 836 F.2d 1386) (noting that even under the current rules there is "systematic bias against carriers -- forcing carriers to disgorge excess profits, but absorb shortfalls").

⁵⁴ Raymond James Report at 2-5.

⁵⁵ *See Comments of NCTA* at 4 ("The pertinent legal requirement is that the Commission's regulatory actions not result in earnings that are so low as to be confiscatory").

⁵⁶ 47 U.S.C. § 254.

⁵⁷ *See Comments of CenturyTel* at i, iv (stating that balanced revenue streams are a necessity).

quality services at rates comparable to urban areas.⁵⁸ In any restructuring of those charges, revenue neutrality is the only way to assure continued investment incentives, and continued high-quality service, in all of America, including those areas that are not attractive to competitors. Investors have a right to reasonable return on investment, but they also have an expectation of predictability when they make long term investment, such as is required in telecommunications infrastructure.⁵⁹

If the Commission lowers support provided through inter-carrier payment mechanisms, and the Commission does not replace this lost revenue through another mechanism, there will be two likely outcomes for rural ILECs. First, rural carriers could attempt to raise end-user rates. However, rate increases risk making service unaffordable. The ICF estimates that the elimination of inter-carrier compensation could shift as much as \$9 billion per year in charges that, ultimately, would be paid by end-users.⁶⁰ As explained by Interstate Telecom Consulting Inc. (“ITCI”), one of its typical rural telephone company clients would lose \$27.00 per line per month in inter-carrier compensation revenue.⁶¹ In order to recover this revenue through end-user rates, the rural ILEC would need to more than double its customers’ bills for basic monthly service – from approximately \$21.50 per line per month on average (including a \$6.50 SLC) to

⁵⁸ Comments of TDS at ii (the Commission should “recognize that intercarrier compensation revenues play a significant role in supporting the provision of valuable telecommunications services in smaller communities at reasonable rates”).

⁵⁹ See *Vitelco*, 989 F.2d at 1233 (quoting *FPC v. Hope Natural Gas*, 320 U.S. 591, 603 (1994)) (noting that the Commission's authority over local exchange carrier rates must be exercised in such a way to “assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital;” *id.* at 1234 (citing *AT&T*, 836 F.2d at 1392) (noting that the FCC's rate regulation should not prevent regulated carriers from achieving the authorized rate of return and attracting necessary capital).

⁶⁰ Letter from Richard R. Cameron to Marlene H. Dortch, Secretary, CC Docket No. 01-92 (Dec. 14, 2004) (“ICF December 14th Ex Parte”) (adding approximately \$6.34 billion in estimated SLC increase and approximately \$2.67 billion in TNRM/ICRM Support).

⁶¹ Comments of ITCI at 12.

\$48.50 per line per month – an amount that would be unaffordable to many rural customers.⁶²

Such price increases would almost certainly cause customers to drop off the network. In addition, the rural ILEC may lose customers to competitors that provide lower quality services and that are not required to serve the entire study area.

Alternatively, as predicted by many commenters, rural ILECs could experience a substantial revenue shortfall.⁶³ A revenue shortfall could force the rural ILEC to pull back investment, which also could lead to lower quality services and inhibit deployment of advanced services.⁶⁴ Reductions in network investment today will lead to either lower service quality or higher maintenance costs in the future. Such a shortfall would be particularly devastating as customers are demanding more and more advanced telecommunications capability from their

⁶² *Id.*

⁶³ Comments of NECA at 4 (NECA members that participate in its common line and traffic sensitive pools receive approximately 29% of their total net telephone company operating revenue from inter-carrier compensation); Comments of ITCI at 11 (estimating that typical ITCI clients receive approximately 34% of their revenue from inter-carrier compensation); Comments of NCTA at 18 (“on average, 30% of a rural telephone company’s revenue stream already comes from universal service support”).

⁶⁴ Legg Mason, *Reshaping Rural Telephone Markets: Financing Perspectives on Integrating Acquired Access Lines*, at 21 (Fall 2001) (“In recent years, we believe that RBOC managements have directed resources to urban areas, where long-term strategic positioning is key and higher return on investment can be generated. As a result, it appears that rural investments have been minimal and, when the companies are pressed to upgrade non-urban properties, divestiture becomes a more logical outcome”); *see, e.g., US West Communications, Inc. and Eagle Telecommunications, Inc.*, Order, 10 FCC Rcd 1771 (1995) (involving the sale of 43 exchanges from US West to PTI/Eagle, which would increase universal service support to the subject exchanges by \$18.1 million); *Pioneer Telephone Cooperative, Inc., Panhandle Telephone Cooperative, Inc., EagleNet, Inc.*, Order, CC Docket No. 96-45, DA 01-659 (rel. Mar. 19, 2001) (involving the sale of 14 exchanges from GTE Southwest Incorporated to EagleNet, PTCI and Pioneer, which would receive an additional \$47,514 per year in high-cost loop support); *M&L Enterprises, Inc. d/b/a Skyline Telephone Company, Petition for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission’s Rules*, Order, 19 FCC Rcd 6761 (2004) (involving a transfer of certain portions of Verizon’s and Qwest’s study area to Skyline, which would receive approximately \$71,000 annually in high-cost support).

telecommunications networks, causing network costs to rise. In the face of such challenges, carriers may no longer be able to sufficiently fund infrastructure in very high-cost areas.⁶⁵

Whether rural rates rise or rural carriers experience a revenue shortfall, a failure to account for and replace any lost inter-carrier compensation will directly and adversely impact universal service. Thus, the welfare of rural customers and carriers requires that the Commission include revenue neutrality for carriers-of-last-resort as a principle in whatever reform measures it adopts.

B. End-User Rate Increases Would Disproportionately Affect Rural Consumers And Would Not Serve the Public Interest

CenturyTel cannot support the ICF Plan or any proposal that would disproportionately shift the lion's share of network costs to end-users who also will not benefit from that shift. In their advocacy of plans to simplify rates for carriers, many parties seem to forget to focus on consumer welfare. The central mandate of the Communications Act is to ensure universal availability of advanced telecommunications capability to *all* Americans at affordable and reasonably comparable rates.⁶⁶ The Commission must not displace its focus on universal service with actions that would help certain carriers and the largest end-users at the expense of rural America.

Many commenters agree that proposals that replace inter-carrier compensation with a higher SLC – or any flat end-user charge – will disproportionately burden those customers least able to pay, and should be rejected. If the Commission deems a SLC increase is necessary, CenturyTel supports a maximum increase in the residential SLC of no more than \$1.50 beyond

⁶⁵ *Id.*

⁶⁶ Comments of CenturyTel at 1 (citing 47 U.S.C. §§ 151, 254).

the current \$6.50 cap.⁶⁷ Under the current compensation framework, inter-carrier compensation (*e.g.*, switching and transport) and end-user rates (*e.g.*, end-user toll and tiered bucket plans) are substantially driven by the amount of service used each month. Generally, charges are usage-sensitive and distance-sensitive. Carriers and customers that utilize the network most heavily are “cost-causers” and they should bear the costs of supporting that usage.⁶⁸ A system that would shift the burden of network compensation away from the “cost-causers” to a flat fee on all users would, by definition, be a regressive charge.⁶⁹ A flat-rated fee would disproportionately harm those customers that place the *least* burden on the network. For example, the monthly SLC increase of \$3.50 per residential line proposed by the ICF Plan⁷⁰ would have a relatively large effect on a customer with a bare-bones calling plan used solely for local calling and emergencies, compared to the more modest percentage increase for a high-usage customer that takes advantage of numerous advanced calling features.

As NASUCA observes in its comments, “any increase in the SLC will continue and exacerbate the shift in network cost recovery away from large users of the network and onto small users.”⁷¹ Under the ICF Plan, approximately \$6.34 billion in inter-carrier compensation would be replaced by subscriber charges.⁷² In addition to that staggering amount, the record demonstrates there will have to be substantial increases in universal service funding (also paid for by end-users). NECA estimates that the NARUC Proposal would result in increased

⁶⁷ Comments of CenturyTel at 16.

⁶⁸ Comments of Rural Alliance at 15; Comments of ICORE at 7.

⁶⁹ Comments of CenturyTel at n.18; Comments of NTCA at 39 (“charging a flat rate for transport services will result in some customers vastly overpaying for their use of the network while others receive considerably more service than they actually pay for”).

⁷⁰ ICF Plan at 61-63.

⁷¹ Comments of NASUCA at 31.

⁷² *See id.* at n.45.

universal service funding requirements for NECA pool members of approximately \$1.7 billion annually; the ICF Plan would shift approximately \$1.9 billion to universal service; the Rural Alliance Proposal would shift \$0.9 to universal service; and the Staff Proposal set forth in Appendix C of the *FNPRM* would raise end-user rates and USF requirements by \$2.3 billion dollars.⁷³ The ICF itself estimates the total impact of these changes would be as much as \$9 billion.⁷⁴

Similarly, in its comments, ITCI cautions the Commission that non-RBOCs received \$3.678 billion in combined interstate and intrastate access revenues in 2003.⁷⁵ ITCI then points out that:

If a major portion of this \$3.678 billion in non-RBOC access revenues were transferred into federal universal service mechanisms and if this amount were then multiplied by additional “competitively neutral” portable USF support distributed automatically to [CETCs] on the basis of per-line ILEC support, the aggregate size of federal USF mechanisms could exceed \$11 or \$12 billion.⁷⁶

CenturyTel echoes these concerns. The “side-effects” of inter-carrier compensation reform must not be borne by consumers, especially rural end-users who can least afford rate increases. For these reasons, CenturyTel advocates a balance of three significant revenue streams: end-user charges, universal service *and* inter-carrier compensation.⁷⁷ Only with a sufficient charge on network *users* will the cost causers bear their fair share of the price of a universal network.

⁷³ See Comments of NECA, Summary.

⁷⁴ See ICF December 14th Ex Parte.

⁷⁵ Comments of ITCI at 12-13 (citing Industry Analysis & Technology Division, *Telecommunications Industry Revenues 2003* (March 2005), at Table 5, Line 304a).

⁷⁶ *Id.*

⁷⁷ Comments of CenturyTel at i, iv.

C. The Current Access Charge Framework Should Be Reformed in a Revenue Neutral Manner

CenturyTel supports the Commission's goals of simplifying inter-carrier compensation, but such simplification should not lead to insufficient support for rural areas. As explained by TDS in its comments, "reductions in intercarrier compensation rates should take effect gradually over a carefully structured transition period to allow carriers and consumers to adjust to revenue and rate changes," and "must also be accompanied by revenue replacement mechanisms for all carriers."⁷⁸ The Commission should not allow inter-carrier compensation reform to become a vehicle for some carriers to abdicate their obligation to provide compensation for use of telecommunications networks.

For example, CenturyTel supports creating a unified rate structure for access charges and reciprocal compensation,⁷⁹ but the result of a unified rate should be revenue neutrality, not a race to the bottom for compensation mechanisms.⁸⁰ CenturyTel also would support a unified rate for all types of traffic, such as that proposed by the Rural Alliance, based on historic costs in each study area, provided the rate level is sufficient to support a meaningful portion of CenturyTel's costs.⁸¹ CenturyTel continues to support the concept, raised in numerous plans, to close the gap between interstate and intrastate charges over time.⁸² This change alone will produce a massive revenue shift for most ILECs, however. In each instance,

⁷⁸ Comments of TDS at 25.

⁷⁹ Comments of CenturyTel at 27.

⁸⁰ Comments of CenturyTel at 28-29.

⁸¹ *Id.* See ARIC Plan at 37-57. NARUC also supports an alternative of retaining originating access charges on switched traffic. See May 18 NARUC Proposal at 3.

⁸² See ICF Plan at 32; ARIC Plan at 37, 42; EPG Comprehensive Plan for Intercarrier Compensation Reform, Nov. 2, 2004, at 6 ("EPG Plan"), attached to Letter from Glenn H. Brown to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Nov. 2, 2004); Universal Telecommunications Freedom (UTF) Plan, Frontier, CC Docket 01-92, at 8-10 (filed May 9, 2005) ("Frontier Plan").

the Commission should look to balance the revenue streams in a way that strives for simplification and revenue neutrality, but retains a balance of three meaningful compensation mechanisms. Moreover, as CenturyTel pointed out in its Comments, the mechanism should discourage abuse by requiring all users to pay a fair share for their network usage.⁸³

D. Wireless ETCs Should Not Be Eligible for Support Mechanisms Used to Replace Inter-Carrier Compensation Mechanisms Applicable Only to Wireline Carriers

CenturyTel long has advocated sensible restraints on CETC designation and funding. CenturyTel agrees with the Rural Alliance that “stricter enforcement for ETC designations” will be a critical part of “enforcing competitive neutrality and limiting inappropriate growth in the fund.”⁸⁴ CenturyTel supports TDS’s recent Petition for Reconsideration of the Commission’s *CETC Standards Order*, which seeks to strengthen the CETC designation guidelines so that universal service funds are distributed only to carriers that

⁸³ In particular, “free” network access produced huge arbitrage schemes for termination of ISP-bound traffic. Comments of CenturyTel at 42-44. For this reason, CenturyTel prefers that carriers continue to pay both originating and terminating charges. Notwithstanding this, CenturyTel has voiced its tentative support for a gradual phasing out of origination charges, and moving to a terminating-only rate for all types of traffic. *Id.* at 27. But zeroing out originating charges must be counterbalanced with replacement revenues to achieve revenue neutrality. Further, if the Commission eliminates origination charges, it also must remove equal access requirements, which are applicable only to ILECs. *Id.* at 25-26. Access charge support mechanisms that are vital to rural telecommunications investment should not be phased out without also providing for a revenue replacement mechanism. As explained in CenturyTel’s initial Comments, the ICF proposal to eliminate origination charges leads to a more than 50% shortfall in inter-carrier compensation. *Id.* at 27-28 (citing ICF Plan at 38). The NARUC Proposal includes a terminating-only rate that is similarly inadequate – doubling the NARUC proposed rates would still result in insufficient compensation. *Id.* (citing May 18 NARUC Proposal at 4, 13). Because of the relative levels of intrastate access charges today, the unification of access charges and elimination of origination charges together pose a massive shift in ILEC revenues. Inter-carrier compensation usage rates should be set at a level sufficient to allow rural carriers to continue to recover from such rates at least 50 percent of the revenues historically recovered from access charges. *Id.*

⁸⁴ Comments of the Rural Alliance at 85.

“are truly committed to fulfilling the goals of federal USF.”⁸⁵ The standards adopted by the FCC will not prevent a windfall to CETCs because the standards do not require the CETC to perform at the same level as the ILEC in order to receive the same support, they are not mandatory, and they apply only on a prospective basis.⁸⁶

The Commission should not fund CETCs unless they provide a level of service and take on the same regulatory obligations as the carrier-of-last resort. Further, both the benefits *and the costs* of designating a CETC must be weighed to determine if providing federal funds to the CETC applicant will serve the public interest.⁸⁷ No checklist of carrier promises regarding how the CETC applicant would spend universal service funds is enough to answer the question of whether providing federal funds to that carrier in a particular study area would serve the public interest. Competitive neutrality demands that competitive carriers, which do not bear the costs as carrier-of-last-resort, should not be funded unless they accept the heightened regulatory obligations borne by the ILEC.⁸⁸

In the course of inter-carrier compensation reform, the Commission must decide if carriers other than the carrier-of-last-resort should be eligible for support mechanisms meant to replace reductions in revenue experienced by LECs lowering access charges. The public interest would not be served by providing any new access replacement support to carriers, such as CMRS

⁸⁵ TDS Telecommunications, Independent Telephone & Telecommunications Alliance, Western Telecommunications Alliance, Petition for Reconsideration, CC Docket No. 96-45, at i (filed June 24, 2005).

⁸⁶ Federal State Joint-Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 05-46, ¶¶ 2, 61, 62 (rel. Mar. 17, 2005) (“*CETC Standards Order*”).

⁸⁷ *Id.* at ¶ 46.

⁸⁸ CMRS costs bear no resemblance to wireline carrier costs, and therefore the Commission’s identical support rule makes no sense. CenturyTel appreciates the Joint Board’s thoughtful efforts in this area and will continue to work with the Joint Board and the Commission to resolve these problems in CC Docket No. 96-45.

providers, that are not receiving any access charges today or otherwise would not experience a revenue shortfall caused by reform.⁸⁹ Some commenters, such as ICF, split the proverbial baby by making such new support available to all carriers in non-rural areas but only to ILECs in rural areas.⁹⁰ This is insufficient. CMRS carriers already get an unjustified windfall through matching funds for ILECs' interstate access support ("IAS") and interstate common line support ("ICLS").⁹¹ These also were mechanisms designed to replace access revenues.⁹² Despite the fact that wireless CETCs never received access charges, they are nevertheless eligible to receive IAS and ICLS in the same per line amount for which the ILEC is eligible. This makes no economic sense. The Commission should not, again, provide such a windfall to wireless CETCs or any other carriers that do not experience a revenue shift as a result of this proceeding.

E. The Commission Should Modify the Rural Growth Factor and Remove the Cap on ILEC High-Cost Loop Support

CenturyTel agrees in principle with Frontier, ARIC, ICF, and other commenters that the cap on rural high-cost loop support ("HCLS") should be removed and that ILEC funding levels should be reset to reflect a frozen national average cost per loop ("NACPL").⁹³ The

⁸⁹ *Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges*, Declaratory Ruling, 17 FCC Rcd 13192, ¶¶ 9-12 (2002) (finding that there is no Commission rule that allows CMRS providers to unilaterally impose access charges on IXC and allowing providers to receive access charges only pursuant to contracts with IXCs).

⁹⁰ ICF Plan at 69-75.

⁹¹ 47 C.F.R. § 54.307.

⁹² *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers, Sixth Report and Order*, CC Docket Nos. 96-262 and 94-1, *Report and Order*, CC Docket No. 99-249, *Eleventh Report and Order*, CC Docket No. 96-45, FCC 00-193 (May 31, 2000); *Multi-Association Group Plan for Regulation of Inter-State Services of Non-Price Corp Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 00-256, *Fifteenth Report and Order*, CC Docket No. 96-45, and *Report and Order*, CC Docket Nos. 98-77 and 98-166, FCC 01-304 (November 8, 2001).

⁹³ Frontier Plan at 15-16; ICF Plan at 9; ARIC Plan at 72.

Commission maintains an indexed cap on HCLS.⁹⁴ The cap grows at a rate equal to one plus the Rural Growth Factor, which is the sum of the annual change (positive or negative) in the number of working loops and the GDP-CPI.⁹⁵ Carriers eligible for support receive funding only if their study area average costs per loop exceed 115% of the NACPL, as adjusted for the cap.⁹⁶ Unfortunately, study area average costs per loop have been rising more rapidly than total available high-cost support, which actually has declined for the first time in 2005 due to a negative Rural Growth Factor. This disparity means that high-cost support is no longer sufficient, predictable and specific, contrary to the requirements of the Act.⁹⁷

Rural ILEC costs have been rising steadily for reasons that are often outside their control. While certain costs, like property taxes and general purpose computer costs, have remained stable, other costs, such as fuel costs, healthcare expenses, external audit fees, general insurance costs, and repair and maintenance costs, have risen. The overall effect of such changes is a net increase in actual costs per loop. Moreover, customer needs are expanding. Demand for greater network capability for the delivery of advanced telecommunications and information services has necessitated greater investment in more robust loop infrastructure.⁹⁸ CenturyTel

⁹⁴ *In the Matter of Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carrier and Interexchange Carriers*, Fourteenth Report and Order, FCC 01-157, ¶ 31 (rel. May 23, 2001) (“RTF Order”).

⁹⁵ *Id.* at ¶ 48.

⁹⁶ 47 C.F.R. § 36.631. CenturyTel refers to this number herein as the “effective NACPL” because, as described below, it diverges significantly from the actual NACPL.

⁹⁷ 47 U.S.C. § 254(b)(5).

⁹⁸ Jodi Wilgoren and David E. Sanger, *Bush and Kerry Offer Plans for High-Tech Growth*, N.Y. TIMES, June 25, 2004, at A18 (quoting President Bush, “The goal is to be ranked first when it comes to per capita use of broadband technology.”); Kevin J. Martin, Editorial, *United States of Broadband*, WALL ST. J., July 7, 2005, at A12 (“Creating a policy environment that speeds the deployment of broadband throughout the U.S. is my highest priority as the new chairman of the FCC.”).

finds itself between a rock and a hard place, challenged by demand for services at the same time as the cap acts to reduce support. Line loss is exacerbating the problem. CenturyTel has lost lines each year since 2001, and it has lost over 5% of access lines during the period between December 2001 and December 2004. Such trends are common among rural ILECs.⁹⁹ High-cost support is no longer sufficient to meet the increasing demands of rural ILECs.¹⁰⁰

The Overall Size of the Fund Is Unexpectedly Decreasing Due to a Negative Rural Growth Factor. The Rural Growth Factor has had the unintended consequence of lowering the size of the HCLS fund and must be changed. Specifically, the decrease in ILEC working loops has outpaced increases in GDP-CPI for the first three quarters of 2005, resulting in a negative Rural Growth Factor and a shrinking fund.¹⁰¹ The Commission never discussed the possibility that the Rural Growth Factor would be used to decrease support for study areas that otherwise qualified for funding.¹⁰² When the Commission re-based the indexed cap in 2001 and defined the new Rural Growth Factor, it sought to “limit growth” and it never articulated the

⁹⁹ Raymond James Report at 9-15 (illustrating line loss for ALLTEL, Citizens, CenturyTel, Cincinnati Bell, TDS, Commonwealth Telephone, CT Communications, Alaska Communications and Iowa Telecom).

¹⁰⁰ 47 U.S.C. § 254(b)(5).

¹⁰¹ *Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2005*, available at <http://www.universalservice.org/overview/filings/>, 7 (Nov. 2, 2004) (decrease of 0.04%); *Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2005*, available at <http://www.universalservice.org/overview/filings/>, 6 (Jan. 31, 2005) (decrease of 0.04%); *Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2005*, available at <http://www.universalservice.org/overview/filings/>, 6 (May 2, 2004) (decrease of 0.06%).

¹⁰² *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 18 FCC Rcd 16978, at ¶ 184 (2003) (“Since 2000, we have seen for the first time a decrease in the number of retail access lines served by the incumbent LECs: from 2000 to 2002, their share of access lines declined by about nine million, or about 4.7%.”).

possibility of shrinking the fund.¹⁰³ All rural ILECs are now receiving less support under the cap than they would receive without it, regardless of their study area average cost per loop. The Commission should modify the Rural Growth Factor to eliminate line *loss* as a factor, and ensure that the Rural Growth Factor cannot cause the fund to shrink.

The Rising Effective NACPL Results in Insufficient Support. Since rural ILECs receive support based on the amount by which their individual study area average cost per loop exceeds 115% of the NACPL, if costs rise faster than the indexed cap grows, the effective NACPL is continually adjusted upward to keep disbursements at or below the indexed cap.¹⁰⁴ While the actual NACPL historically hovered around \$240, and was frozen at that level in 2001,¹⁰⁵ the effective NACPL has jumped from \$240 per-line in 2001 to \$305.74 per-line in the second quarter of 2005, an increase of over 27% in just four years. A rural ILEC's loop costs must exceed \$351 per loop (146% of the frozen NACPL) even to qualify for high-cost loop support. The result is that more and more study areas drop out of the fund. Based on NECA data, more than 140 study areas serving 4.4 million access lines have become ineligible for support based solely on the rising effective NACPL.¹⁰⁶ If the fund were uncapped and carriers received funding based on actual NACPL, approximately \$1.522 billion would be available for eligible carriers.¹⁰⁷ With an effective NACPL of \$305.74, \$1.056 billion is available for rural ILECs – a deficiency of over \$465 million.

¹⁰³ See *RTF Order* at ¶ 49.

¹⁰⁴ *Universal Service Monitoring Report*, CC Docket No. 98-202, 3-3 (rel. Nov. 23, 2004).

¹⁰⁵ See *RTF Order* at ¶ 57.

¹⁰⁶ Based on an NACPL of \$240, 1,239 study areas would be eligible for support, whereas based on an effective NACPL of \$305.74, only 1,093 study areas are eligible for support.

¹⁰⁷ CenturyTel provides these estimates based on data provided by NECA.

The progressive formula used to determine support disbursements causes the burden of this sharp rise in effective NACPL and concomitant deficiency in HCLS to be inequitably shouldered by those rural ILECs that successfully control costs. The current funding mechanism thereby sends the wrong message to rural ILECs. For CenturyTel, which falls into the category of relatively efficient rural ILECs, the effect has contributed to a dramatic decline in support - 7% between 2004 and 2005 alone.¹⁰⁸ This shrinking of the overall fund and the withdrawal of support from some exchanges are consequences that were specifically unanticipated by the Commission.¹⁰⁹

The record is replete with evidence on the adverse effect of this funding shortfall. The Commission immediately should take steps to eliminate or substantially revise the cap on HCLS and restore funding to actual cost levels.

F. The Commission Should Clarify ILEC Interconnection Requirements

Several commenters agree with CenturyTel that the Commission must develop clearer rules regarding interconnection obligations to curb current abuses and to increase certainty of carrier revenues.¹¹⁰ CenturyTel continues to support several aspects of the ICF Plan's architecture rules, such as the distinction between CRTC's and other carriers, the network "edge" definitions, the default interconnection rules, and the mandatory transiting obligations, in

¹⁰⁸ This decline in CenturyTel's support resulted in large part from the cap on the fund and the effect of the Rural Growth Factor, but also in part from CenturyTel's ability to gain efficiencies and lower costs in some of its study areas.

¹⁰⁹ The Commission did "not anticipate a dramatic increase or decrease in the actual national average loop cost in the near future such that... carriers with higher than average loop costs will inappropriately be denied high-cost loop support." *RTF Order* at ¶ 57 (setting forth its rationale for freezing the actual NACPL at \$240 per loop).

¹¹⁰ See *infra* notes 113, 116, 120.

order to clarify the rights and obligations of all interconnecting and terminating carriers.¹¹¹ The Commission should incorporate this architecture in its new rules.¹¹² No plan, however, adequately addresses questions about “virtual NXX” (“VNXX”) codes, undue discrimination in favor of CMRS carriers pursuant to the Commission’s intraMTA rule, and Internet Protocol (IP-) based traffic.

1. The Commission must clarify rules governing VNXX so carriers are properly compensated for non-local calls

Several commenters correctly identify VNXX as a major source of disputes caused by current ambiguities in the Commission’s rules.¹¹³ Pursuant to the current rules, ILECs sometimes must transport traffic hundreds of miles outside their local exchange areas without any compensation. As explained by Verizon, “competitors have widely employed virtual NXX, which enables them to disguise calls between customers in different local calling areas – and even different states – and to make such calls appear to be local calls for which the competitor would be entitled to compensation.”¹¹⁴ Obviously, there are costs involved with maintaining the

¹¹¹ Comments of CenturyTel at 40 (citing ICF Plan at 4-6, 19-25, 25-31). CenturyTel disagrees with carriers that voice concern over the complexity of the ICF Plan’s network architecture proposal. *See, e.g.*, Comments of NTCA at 45. To the contrary, the ICF Plan is the only proposal on which the Commission sought comment that includes the level of detail required to remedy the current rules.

¹¹² CenturyTel continues to have concerns about the ICF-proposed rate structure, which would eliminate originating access charges, potentially leading to carrier arbitrage schemes and insufficient compensation to terminating carriers. *See, infra*, note 83. The Commission also should address the problem of ISPs creating sham CLEC affiliates simply to collect termination charges for the end-user ISP. *See* Comments of CenturyTel at 8, 28.

¹¹³ Comments of CenturyTel at 4, 23; Comments of Qwest at 44 (“Regardless of what the Commission does with respect to intercarrier compensation it must clarify the correct regulatory treatment of VNXX traffic”); *see* Comments of Verizon at 12-13; Comments of California Small LECs at 2-5; Comments of CompTel/ALTS at 17-18.

¹¹⁴ Comments of Verizon at 12.

necessary infrastructure and providing such transport, and there should be compensation for this service.

Moreover, when a carrier (for example an ISP or paging company) uses VNXX to provide its customers with a local number but the carrier has no point-of-presence in the local calling area, then the call is, in practice, handled as an interexchange call. Therefore, VNXX traffic that is not actually local should be subject to access charges. VNXX traffic is increasingly congesting toll trunks, but, due to ambiguities as to the proper classification of these non-local calls to local NXX codes, the parties that are causing this congestion provide no compensation to expand these ILEC toll facilities. Rural carriers are hit the hardest by VNXX abuse because rural areas on average require longer transport distances than urban areas, and rural areas have fewer transport facilities over which to spread increased traffic and alleviate congestion. CenturyTel thus supports Qwest's proposal that "Both interLATA and intraLATA VNXX calls are properly classified as interexchange calls subject to access charges under the current regulatory structure."¹¹⁵ No commenter has provided a credible reason that competitive carriers should be able to shift the costs of transport onto the ILEC, or be able to avoid legitimate access charges, merely by giving the customer an NPA-NXX code that does not reflect the customer's or carrier's actual location.

2. Elimination of the IntraMTA rule would be consistent with the Commission's goal of competitive and technology neutrality

A number of commenters support elimination of the Commission's determination to designate the entire MTA as the local service area for CMRS carriers, an area typically far

¹¹⁵ Comments of Qwest at 45.

larger than wireline local exchange areas.¹¹⁶ These rules have an especially onerous effect on small and rural carriers, that are asked to treat as local CMRS traffic that must be transported across a state-wide MTA, sometimes hundreds of miles outside the ILEC's network footprint. The ICF Plan would substantially mitigate the negative effects of the intraMTA rule through its default interconnection rules that ease the burdens on rural ILECs to transport traffic outside their contiguous service territories.¹¹⁷

Harmonizing the treatment of CMRS and LEC traffic would facilitate the Commission's goals of simplification through inter-carrier compensation reform. As explained by the Rural Alliance, "the intraMTA rule creates artificial distinctions between calls, confusion among carriers and regulators, and results in inconsistent application of reciprocal compensation and access charges."¹¹⁸ CenturyTel supports the Rural Alliance's proposed method for determining which LEC-CMRS calls are subject to reciprocal compensation and which are subject to access charges, until the distinction between access and reciprocal compensation is eliminated.¹¹⁹

3. The Commission should clarify that IP-Enabled traffic is subject to inter-carrier compensation

CenturyTel agrees with the Rural Alliance, EPG and Frontier that inter-carrier compensation reform must account for IP-enabled communications.¹²⁰ Because all networks, including those operated by ILECs, CLECs, and CMRS carriers, are moving toward IP-based

¹¹⁶ See e.g. Comments of the Rural Alliance at 126; California Small LECs at 5; Comments of Qwest at 54; Comments of the United States Telecom Association at 48.

¹¹⁷ ICF Plan at 3-24.

¹¹⁸ See Comments of the Rural Alliance at 127.

¹¹⁹ Comments of the Rural Alliance at 127 (stating that the distinction "should be based upon the facilities and carriers used to complete the call").

¹²⁰ Comments of CenturyTel at 44 (citing ARIC Plan at 97); EPG Plan at 18-20; Frontier Plan at 4.

technology, it would be short-sighted not to include IP-PSTN communications in the reforms that the Commission adopts. Just as traditional telephone networks increasingly employ IP technology, it is equally clear that broadband services providers increasingly resemble basic local exchange service provider.¹²¹ As EPG explained:

Allowing VoIP providers to use the local network for free would provide them with an unwarranted competitive advantage, and would not be competitively neutral. If ISPs are allowed to use the ESP/ISP Exemption for this unintended purpose, it will become difficult or impossible to implement . . . efficient forward-looking intercarrier compensation¹²²

If the Commission continues to provide special treatment to IP-based services, the decline in switched access revenues will accelerate as IP-based technologies continue to grow based on regulatory arbitrage rather than its own merits. Ultimately, this trend will impede ILECs' ability to maintain their carrier-of-last-resort obligations and to offer affordable basic local exchange service to all customers.¹²³ Thus, the Commission should clarify the treatment of IP-based services, and work toward a solution that is competitively and technology neutral.

IV. CONCLUSION

For the foregoing reasons, CenturyTel urges the Commission immediately to take the relatively simple actions described in Section II of these Reply Comments to vastly improve the current inter-carrier compensation framework before it adopts any of the major reform measures proposed in this proceeding. In addition, as it considers major inter-carrier

¹²¹ Indeed, Vonage, perhaps the most successful independent VOIP provider, bills itself as a "broadband phone company," and there is very little to distinguish its marketing from that of any non-IP-based local telephone service provider. See www.vonage.com. Although Vonage's home page notes many of the features of Vonage phone service, it does not specify that the Vonage service uses VOIP technology until the tiny light-grey print at the very bottom of the page. *Id.*

¹²² EPG Plan at 19.

¹²³ Comments of Coalition for Capacity-Based Access Pricing at 11.

compensation reform, the Commission should ensure that such reforms are revenue neutral, clarify the interconnection and transport obligations of all carriers, and make certain that the reforms benefit *all* consumers, not just certain carriers or high-volume end-users to the detriment of rural communities and the carriers that serve them.

Respectfully submitted,

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